UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 12-20030

vs.

HON. NANCY G. EDMUNDS

D-3 CHAUNCEY MAYFIELD,

Defendant.
_____________________________________/

SENTENCING MEMORANDUM OF THE UNITED STATES
AS TO DEFENDANT CHAUNCEY MAYFIELD

I. INTRODUCTION

Chauncey Mayfield was an investment manager and infrequent investment sponsor for the City of Detroit's Police and Fire Retirement System ("PFRS") and an investment sponsor for its General Retirement System for a number of years, including the period from 2006 to 2008. During the stated years, Mayfield provided numerous things of value to Trustees of those systems with the intent to influence and reward them for board actions which favored his company, Mayfield Gentry Realty Advisors ("MGRA"). All told, Mayfield provided luxurious private airline travel, resort accommodations and other things of value worth over

$180,000 during that time frame. In return, MGRA received millions of dollars in fees and Mayfield's compensation exceeded $2 million. Mayfield acknowledged at trial that the years in which he gave the gratuities to these public officials were the most prosperous years in MGRA's history.

While empowered with the authority to make investments up to a certain dollar amount without prior PFRS approval for the transactions, Mayfield also purloined approximately $3 million in PFRS funds and invested the money in the name of MGRA rather than for the benefit of PFRS. MGRA's activities came under civil investigation of the Securities and Exchange Commission. When the theft could no longer be concealed, some four years after its occurrence, an MGRA employee disclosed it to the PFRS Board, and the Board promptly fired MGRA. Through a combination of sales proceeds for the property the stolen money had been used to purchase, an insurance payout for corporate actions, and a smaller portion of his own personal funds, Mayfield was successful in orchestrating the repayment of the funds to the PFRS.

Though Mayfield was not immediately forthcoming about the nature and scope of his gratuity-paying activities when first questioned by governmental authorities, he eventually admitted his wrongdoing and took significant steps to correct it and to accept responsibility. Accompanying his actions in arranging for repayment of the stolen PFRS funds was his decision to cooperate with the government by providing information about the criminal wrongdoing of the government officials whom he rewarded and influenced with things of value, and testifying against them at trial. His cooperation substantially assisted in the prosecution of others, and resulted in a motion for a downward departure from the applicable sentencing guidelines. Mayfields's sentence should reflect the serious crime he committed, while at the same time recognizing the very substantial efforts he has made to make things right.

II. ARGUMENT

A. The Nature and Circumstances of Mayfield's Crimes (18 U.S.C. §3553(a)(1))

MGRA and the PFRS first entered into a Real Estate Investment Advisory and Asset Management Agreement (the "Agreement") in May of 2005. Under the terms of the Agreement, MGRA was tasked with, among other things, advising the PFRS as to the propriety of making certain real estate investments and the impact of those investments on the overall investment objectives of the PFRS. Separately, MGRA presented proposed investments primarily to the GRS, for growth of its portfolio. Up until roughly the summer of 2006, MGRA's status with the PFRS seemed secure. However, following a change in mayoral administrations, co-defendant Jeffrey Beasley informed him that MGRA's status was compromised by Mayfield's support for another candidate for mayor rather than the winner. He learned that he would need to essentially buy his way back into the good graces of the mayor.

Because MGRA's business at the time of the alleged mayoral rift was composed almost exclusively of its dealings with the GRS and PFRS, Mayfield succumbed to the pull of the pay-to-play environment that had overtaken the two systems. At Beasley's and to a lesser degree Ronald Zajac's respective urgings, Mayfield embarked upon a system of patronage that inured to the benefit of former mayor Kwame Kilpatrick, co-defendants Jeffrey Beasley and Paul Stewart, the mayor's father and other members of the Kilpatrick administration. The gratuities which he extended included all of the following: $10,000 for limousines during a New York Pension Conference at the urging of Ronald Zajac, $3,000 for accommodations at a luxury resort in Charlotte, North Carolina for Kwame Kilpatrick and other members of his administration; $50,000 in donations to the Kilpatrick Civic Fund solicited by Jeffrey Beasley; $67,000 for a luxury private jet flight, resort accommodations and entertainment in Las Vegas for Kwame Kilpatrick and member of his administration; $23,000 for a private jet flight for Kwame Kilpatrick, his sons and others to Tallahassee, Florida and $34,000 for a private jet flight for Kwame Kilpatrick and his family members to and from Bermuda. Without taking into account the various meals and drinks Mayfield covered at Mosaic and impressive Christmas gifts he extended to all board members, Mayfield's gratuities paid out total $187,000. Mayfield paid for the above items in order to make amends with the administration and gain favor in MGRA's dealings with both boards. In return, he was rewarded with the highest years of profitability that MGRA had ever seen. Both the number of gratuities and their relatively large value demonstrate the extensiveness of Mayfield's conduct and require true accountability.

B. The Seriousness of Mayfield's Crimes, Just Punishment, and Respect for the Law (18 U.S.C. § 3553(a)(2)(A))

Mayfield's crimes were particularly serious because not only did he give things of value to public pension officials in order to get access to pension money, he then proceeded to misappropriate millions of dollars in pension money once he gained access. As the head of MGRA and under the express terms of MGRA's agreement with the PFRS, Mayfield was a fiduciary in his handling of the public pension money entrusted to him by the pension funds. Mayfield breached that trust by stealing millions from the pensioners. While he should certainly be credited for his efforts in arranging for the repayment of those funds, the lost opportunity for appropriate investment coupled with the undeniable betrayal of his duty to the pensioners should be accounted for in his sentence.

C. Deterring the Criminal Conduct of Others (18 U.S.C. § 3553(a)(2)(B))

The Court's sentence should send a message to other investment managers, sponsors and third party marketers that they will be held responsible for their corruption and embezzlement. Though Mayfield may be one of the last to be sentenced in relation to the chapter of corruption associated with the city's former mayor, the message must remain strong for current office-holders, others imbued with the public trust, and those seeking to do business with the city, that conduct such as that involved in the instant case will be met with swift and sure punishment.

D. Protecting the Public from Further Crimes by Mayfield (18 U.S.C. § 3553(a)(2)(C))

Further crimes by Mayfield are unlikely. Mayfield has accepted responsibility and shown genuine remorse for his criminal conduct. During the course of his testimony at trial, Mayfield acknowledged the criminality of his actions. Given Mayfield's criminal conviction and the resolution of the SEC lawsuit, it is unlikely that he will be put in a position of trust to commit additional crimes in the future.

E. Mayfield's Medical Conditions

There is no dispute that Mayfield has a number of health conditions. However, while empathetic to his health challenges, the defense somewhat overstates the challenges faced by the Bureau of Prisons ("BOP").

Mayfield has not presented evidence that the BOP will, in fact, be unable to handle and address his medical conditions. As the Court is well aware, if the Court decides to incarcerate the Defendant, the BOP will conduct a health screening of the Defendant prior to assigning him to a particular confinement facility. The BOP is staffed with competent medical professionals who take their jobs seriously and will evaluate the Defendant to ensure that he is properly cared for. Clearly, the BOP will be faced with challenges if the Defendant's health takes a decided turn, but the Defendant's medical conditions are not unlike those faced by many other defendants who are incarcerated as they age. In fact, there are many federal inmates who are in their eighties and nineties serving life or decades-long sentences who BOP is currently managing. The BOP will do whatever is necessary to properly care for the Defendant. The federal penal system works very hard to care for individuals under their care, whether they are in their twenties or eighties.

As an initial matter, the Sixth Circuit has held that "'age and health are disfavored factors that the district court may use as bases for granting a downward departure only in exceptional circumstances.'" *United States v. Berro*, 348 Fed. Appx. 98, 101 (6th Cir. 2009) (quoting *United States v. Bostic*, 371 F.3d 865, 875 (6th Cir. 2004)). In fact, although "an aged defendant with a multitude of health problems may qualify for a downward departure under § 5H1.4," such "downward departures are rare." *United States v. Johnson*, 71 F.3d 539, 545 (6th Cir. 1995); *see United States v. Jones*, 445 F.3d 865, 870 n.7 (6th Cir. 2006) (noting that, absent extraordinary circumstances, "[t]he Guidelines discourage courts from considering a defendant's physical condition in determining whether a departure may be warranted"). In *United States v. Darji*, ___ Fed. Appx. ___, 2015 WL 3372729, at *8 (6th Cir. May 26, 2015), the Sixth Circuit affirmed the district court's decision not to grant a variance or a downward departure to a defendant in her sixties suffering from a number of ailments, including degenerative joint disease, hypertension, osteoporosis, depression, and anxiety.

Similarly, in *United States v. Berro*, 348 Fed. Appx. 98, 101 (6th Cir. 2009), the Sixth Circuit held that the district court did not abuse its discretion in refusing to depart downward despite the defendant suffering from many of the same problems as Mayfield - heart problems, diabetes, orthopedic problems, and possibly prostate cancer. The district court had stated that "'medical problems don't, however serious they may be with the individual, have any impact on the issue of when and how and where and for how long somebody is sentenced.'" *Id.*

at 101. In reaching this ruling, the *Berro* court stated, "Although he emphasized the acute nature of some of his ailments, [Berro] offered no evidence that the [BOP] would not be able to accommodate his medical needs." *Id.*; *see United States v. Martinez*, 432 Fed. Appx. 526, 535 (6th Cir. 2011) (defendant could not show that BOP would fail to accommodate his medical conditions). In *United States v. Theunick*, 651 F.3d 578, 592 (6th Cir. 2011), the Sixth Circuit also upheld the district court's refusal to depart downward because of medical conditions that included insulin-dependent diabetes, arthritis of the spine and hips, neuropathy, heart problems, and unspecified complications from exposure to Agent Orange.

Moreover, the Sixth Circuit has upheld district court decisions refusing to depart downward under Section 5H1.4 and otherwise where, like Mayfield in this case, the defendant purports to be suffering from serious medical conditions contributing to a declining health status. *See, e.g.*, *United States v. Slone*, 411 F.3d 643, 646 (6th Cir. 2005) (defendant had two prior heart attacks, open heart surgery, multiple medications for heart disease, back problems, and nervous condition, insulin-dependent diabetes, and deteriorating eyesight); *United States v. Long*, 37 Fed. Appx. 718, 722 (6th Cir. 2002) (defendant's ailments included back problems, knee problems, hypertension, obesity, fibromyalgia, melanoma, and sleep apnea); *United States v. Colvin*, 19 Fed. Appx. 249, 252 (6th Cir. 2001) (defendant suffered from back problems, hypothyroidism, a heart murmur, a paralyzed right foot, double-vision, and sight loss).

The United States does not dispute that the Mayfield has significant medical conditions that affect him on a daily basis. However, the BOP is equipped to handle such conditions. The Court should only grant a downward departure where the medical conditions are deemed to be "exceptional" or "extraordinary."

III. CONCLUSION

Mayfield committed serious criminal conduct over the course of a number of years. This conduct ranged from providing various things of value in order to influence public officials, to the misappropriation of public pension money for the benefit of his own company. Balanced against Mayfield's crimes and misconduct is his acceptance of responsibility and his substantial assistance to the government through his cooperation and truthful trial testimony. For those efforts, Mayfield should receive appropriate credit and due consideration of the Court. The government is confident that the Court will impose an appropriate sentence.

Respectfully submitted,

BARBARA L. MCQUADE
United States Attorney

s/DAVID A. GARDEY
s/STEPHANIE DAWKINS DAVIS
Assistant U.S. Attorney
211 West Fort Street, Ste. 2001
Detroit, Michigan 48226-3211
313-226-9788

DATED:October 5, 2015

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

A. Scott Bolden, Esq.

STEPHANIE DAWKINS DAVIS
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
Phone: (313) 226-9788
E-Mail: Stephanie.Davis@usdoj.gov
Bar No. P47265